

REEDLEY OPERA HOUSE USE AGREEMENT

This Reedley Opera House Use Agreement "Agreement" is entered into and between the City of Reedley "City", and River City Theatre Company, a California non-profit corporation "RCTC", as follows:

Recitals

1. The City owns and operates the Historic Reedley Opera House "Opera House" as a historic and cultural resource in the City of Reedley. The City desires to enter into this Agreement with RCTC to further enhance the use of the Opera House by augmenting its use for theatrical and other revenue-generating productions, while at the same time continuing its use for other private functions with theatre being its primary focus.
2. RCTC, a non-profit organization, is experienced in creating and managing theatrical productions and is presently using the venue provided by the Opera House for such productions, subject to the terms of this Agreement.

Now, therefore, in consideration of the recitals and the covenant and conditions and obligations of the parties described herein, the parties agree as follows:

A. OBLIGATIONS OF THE CITY

1. The City will make full use of the Opera House building available to RCTC.
2. The City will retain full ownership of the Opera House. City's responsibility to maintain and make repairs to the facility shall be subject to available annual appropriations approved by the City Council except to the extent such repairs may be caused by the misconduct, negligent actions or omissions of RCTC or RCTC's invitees.
3. The City will provide, at no additional cost to RCTC, a storage place in the Royal Valley Building. At said time that the building is no longer available for storage the City will notify RCTC with a 30 day written notice. The City is not responsible for any damage caused to the items stored in the Royal Valley Building.
4. The Community Services Department will work closely with the Parks and Recreation Commission to select Reedley based organizations to attend a dress rehearsal of each upcoming play. Maximum of 85 guests. This invitation will be available for all RCTC Productions.

B. OBLIGATIONS OF RCTC

1. RCTC Board of Directors, or designated representative, shall be the Opera House Coordinator and shall report to and account for its management duties as provided in this Agreement, to the Community Services Director, or the designated City Representative. Those duties include:
 - a) Schedule all theatrical and non-theatrical events at the Opera House; and
 - b) Market the Theatre Company in conjunction with the Opera House to tourist, visitor and tour groups; and

- c) Perform routine and general upkeep and maintenance of the Opera House.
 - d) Oversee the setup and take-down for all theatrical and non-theatrical events (excluding the 10 annual city-sponsored events). Actual setup and cleanup is the responsibility of the parties having the event, including the City events; and
 - e) The designated representative of RCTC will be responsible for opening and closing the facility for all city-sponsored events; and
 - f) The designated representative of RCTC will provide lighting and sound equipment and assistance in operating this equipment when available for use at the 10 city-sponsored events; and
 - g) Maintain regular contact with the Community Services Director, or the designated City Representative, with respect to all of the foregoing matters.
2. RCTC shall retain full responsibility for all costs and expenses associated with theatrical and production projects carried out under this Agreement. RCTC shall provide all necessary financing for said productions out of the revenues generated thereby and will be personally responsible to repay all debts incurred in connection therewith. As part of RCTC's obligations, RCTC shall secure and provide, at no cost to the other parties hereto, a policy of liability insurance and workers compensation insurance, which satisfies the insurance requirements shown on Exhibit "A" attached hereto. The City will be named as an additional insured as part of the liability policy.
3. RCTC shall be responsible for the cost of toiletry (toilet paper and paper towels) and cleaning supplies necessary for the building.
4. Subject to the direction of the Community Services Director, or the designated City Representative, RCTC shall have full responsibility for the scheduling of the Opera House for the events not covered by this Agreement and will serve as the scheduling coordinator for all events in the Opera House, including the theatrical productions.
5. In scheduling each of the scheduled and proposed theatrical events, RCTC will cooperate with the Community Services Director, or the designated City Representative, to insure that there is optimal use of the Opera House. The City shall have the full right to use all areas of the Opera House for the 10 city-sponsored events on those days/nights not scheduled for rehearsals or productions and events described in Section B number 4 carried out under the supervision of RCTC with the understanding that theatrical sets and props for the current production will not be disturbed.
6. RCTC shall not make physical changes to the Opera House except after written approval given by the Community Services Director, or the designated City Representative. In particular, none of the historic features of the Opera House shall be altered in any way without the prior written approval of the City. Fixtures and equipment purchases, including additions to the Opera House, may be made by RCTC following City approval, and if permanently affixed to the building, shall become the property of the City.

7. RCTC will also be solely responsible for all of the following functions: to produce and direct five (5) theatrical productions per year; to write material as needed for any original presentation at the Opera House (said material to remain the property of author) to maintain a non-profit organization to accept donations for theatrical productions; to develop additional entertainment in addition to theatrical productions to provide and to assist in providing service to customers in the lobby before and during intermissions for productions at the Opera House.
8. RCTC will work closely with the Community Services Department to create guidelines to assist with the selection process of the Reedley based organizations to attend a dress rehearsal of the upcoming play. RCTC will host the selected guest for the dress rehearsal and become the point person for the selected group as related to the dress rehearsal the group attends in the Opera House.
9. RCTC is responsible for providing quarterly reports to include financials to the City of Reedley of the activities offered or supported by the RCTC to ensure the integrity of the organization.
10. All expenditures must be submitted and approved by the Community Services Director, or the designated City Representative. The City will reimburse for all approved expenditures.
12. Dishes, pots and pans, and all other items that belong to the Opera House must be washed and put back in their original location.
13. Caterer and wait staff, whether employed by the caterer or by RCTC, must be covered and listed in RCTC's insurance policy.
14. Caterer must follow all rules and regulations established by Fresno County Health Department.
15. All concerns and comments from the City will be directed to RCTC in regards to the caterer and the condition of the kitchen.
16. Statements B, numbers 11, 12, 13, and 14 are not applicable to RCTC when the Opera House kitchen is used by outside entities contracted by the City.
17. RCTC has the option to host 10 nontheatrical events in the building to help offset the cost to operate.

C. TERM OF THE AGREEMENT

This Agreement shall begin on November 1, 2014 and expire on October 31, 2019. This agreement may be extended for an additional 5 years with a mutually agreement from both parties. The parties may mutually agree to modify the terms and conditions of this Agreement at any time during the initial term or extended terms of this Agreement with a 30 day written notice to all other parties.

D. RENT

RCTC agrees to pay the City of Reedley \$850 per month as rent due and payable by the 5th day of each month beginning November 1, 2014 and \$900 per month beginning November 1, 2015 and \$1,000 beginning November 1, 2016 through October 31, 2019. River City Theatre may sublet a portion of the facilities for temporary periods not to exceed the extent of this contract after City approval of the tenant. An agreed upon percentage of rental income from the sublet arrangement not to exceed 20% of monthly gross rents will be provided to the City for this privilege. Any sub lessee must agree to the indemnification provisions and provide proof of meeting the insurance requirements in Section J and K of this Agreement, respectively. All arrangements with sub lessees shall be approved by the City Manager and authorized in an MOU between the City, RCTC and the sub lessee.

E. TERMINATION

1. Any party may terminate this Agreement for cause at any time on 30 days written notice to all other parties. In terminating the Agreement "for cause", the party exercising its rights under provision shall provide detailed, written notice of those events, facts, or actions of the other parties which violated the terms of this Agreement and which constitute "cause" for termination.
2. If RCTC becomes unavailable to perform its duties hereunder, the City may terminate this agreement immediately.
3. Upon receipt of notice of termination, neither party shall incur additional obligations under the provisions of this Agreement without the prior written consent of the other.

F. ASSIGNABILITY

The parties agree that they shall not assign or transfer interest in this Agreement, nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

G. NONDISCRIMINATION

RCTC shall not discriminate, in any way, against any person on the basis of age, sex, sexual orientation, race, color, religion, ancestry, national origin, or disability in connection with or related to the performance of his duties and obligations under this Agreement.

H. COMPLIANCE WITH ALL LAWS

RCTC shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. RCTC shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. RCTC shall release, defend, indemnify and hold harmless CITY, their officers, officials, employees, and

volunteers from any and all damages, liabilities, penalties, fines and all other consequences from non-compliance or violation of any laws, ordinances, codes or regulations, except as to those laws, ordinances, codes or regulations the City is required to comply with in carrying out its duties as owner and landlord of the Opera House.

I. NO THIRD PARTY BENEFICIARIES

The parties hereto do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owned by one party, under the terms and conditions of this Agreement, to the other party.

J. INDEMNIFICATION

RCTC shall hold harmless, defend and indemnify City and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with RCTC's use of the Opera House and Royal Valley Building, performance of work hereunder, or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

K. INSURANCE REQUIREMENTS

MINIMUM SCOPE AND LIMIT OF INSURANCE PURCHASED & MAINTAINED BY THE RCTC

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for lessees with employees).

If the RCTC maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained.

Other Insurance Provisions:

The policies are to contain, or be endorsed to contain, the following provisions:

1. For General Liability, the City, its officers, officials, employees, and volunteers are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of that part of the premises leased to the RCTC.
2. The RCTC insurance coverage shall be **primary insurance** as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the RCTC's insurance and shall not contribute with it.
3. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against the City
4. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the RCTC shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the RCTC shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Verification of Coverage

The RCTC shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Waiver of Subrogation

The RCTC hereby grants to City a waiver of any right to subrogation which any insurer of said RCTC may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances

The City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

L. NOTICES

All notices and other communication required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

CITY: City Manager
 City of Reedley
 1717 9th Street
 Reedley, CA 93654

RCTC: River City Theatre Company
 Board of Directors
 1720 10th Street
 Reedley, CA 93654

M. ENTIRE AGREEMENT - AMENDMENTS

1. The terms and conditions of this Agreement represent the entire Agreement of the parties with respect to the subject matter of the Agreement.

2. The terms and conditions under the current agreement dated will be in effect until October 31, 2014. At that time this written Agreement shall supersede all prior agreements, oral or written, regarding the subject matter between the parties.
3. No other agreement, promise or statement, written or oral, relating to the subject matter of the Agreement, shall be valid or binding, except by way of written amendment of this Agreement.
4. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the parties.

N. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration, which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, or covenant of this Agreement or any applicable law, ordinance, or regulation.

O. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of dates shown below.

CITY OF REEDLEY

BY _____
Nicole Zieba, City Manager

DATE _____

RIVER CITY THEATRE PRODUCTIONS

BY _____
Charles M. Wiebe, President

DATE _____



COPY

REEDLEY CITY COUNCIL

- ☐ Consent
- ☒ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: _____

DATE: 5/27/2014

TITLE: AUTHORIZE THE CITY MANAGER TO SIGN THE REEDLEY OPERA HOUSE USE AGREEMENT WITH RIVER CITY THEATRE COMPANY (RCTC) FOR A FIVE YEAR TERM.

SUBMITTED: Joel Glick
Community Services Director

APPROVED: Nicole R. Zieba
City Manager

RECOMMENDATION

Authorize the City Manager to sign the Reedley Opera House Use Agreement with River City Theatre Company (RCTC) for a five year term.

BACKGROUND

The City of Reedley has partnered with RCTC for the last 11 years. The current agreement with RCTC to run live theatre out of the Reedley Opera House facility expires October 31, 2014.

Over the past few months city staff has met with representatives from RCTC to discuss a new 5 year agreement. The expectation from the City is that RCTC will continue to provide quality entertainment and promote cultural arts opportunities. In this new agreement, key changes have been identified for your review.

1. RCTC will allow non-profit, Reedley based organizations to attend a dress rehearsal of each play at no cost.
2. The City no longer provides personnel for janitorial services.
3. The use of the Royal Valley Building by RCTC is now listed in the agreement.
4. RCTC shall be responsible for the cost of toiletries.
5. RCTC is no longer responsible for bus tours.
6. RCTC has the option to host 10 non-theatrical events in the building to off-set the costs to operate.
7. RCTC monthly rent will increase from \$800, as follows:
 - November 1, 2014 - \$850
 - November 1, 2015 - \$900
 - November 1, 2016 - \$1,000 (for the remainder of the agreement).

This agreement will be a five year agreement with a five year extension option. Both parties feel this is a fair agreement and will move both entities forward in reducing the subsidies the City provides.

FISCAL IMPACT

The total subsidy to the Opera House on the annual agreement has been reduced in the new agreement. Currently, the City subsidizes the RCTC approximately \$12,000 annually. Under the new agreement, that subsidy will decrease approximately \$5,000 annually. Unanticipated capital expenses are covered by the City, and it is expected that the Opera House may need a new oven and dishwasher in the next 5 years. Revenues will improve from the current \$9,600 to \$12,000 per year at the end of the term (October 31, 2019). At the end of the initial term, the rent can be renegotiated.

PRIOR COUNCIL ACTIONS

In September, 2009, the current agreement with RCTC was approved by Council.

ATTACHMENTS

1. Reedley Opera House Use Agreement

Motion: _____

Second: _____